

W,P(C) No.32088 of 2025



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2026:KER:10961

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2026 / 17TH MAGHA, 1947

WP(C) NO. 32088 OF 2025

PETITIONER:

RAGHAVAN V.T
AGED 69 YEARS
S/O CHOYI VADAKE THAYYIL, NEAR MOORAD BRIDGE,
PUTHUPPANAM P.O, KOZHIKODE,
CURRENTLY RESIDING AT ARAYULLATHIL HOUSE,
KADALUR P.O, MUDADI, KOZHIKODE, PIN - 673529

BY ADVS.
SHRI.P.SATHISAN
SHRI.SHIBU B.S
SHRI.BIJU P.PAUL
SHRI.ALVIN JEWEL S.S.
SMT.VIDHYA T.U.
SMT.ANTIJA JAMES
SMT.SWALIHA SELMI T.R.
SMT.LEENA VARGHESE
SHRI.RAZAK M.

RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF ROAD TRANSPORT & HIGHWAYS,
GOVERNMENT OF INDIA, CENTRAL DELHI P.O.,
NEW DELHI, PIN - 110001



- 2 DIRECTOR GENERAL (ROAD DEVELOPMENT) & SPECIAL SECRETARY, ROOM NO.213, MINISTRY OF ROAD TRANSPORT & HIGHWAYS, TRANSPORT BHAVAN, 1, PARLIAMENT STREET, CENTRAL DELHI P.O., NEW DELHI, PIN - 110001
- 3 PROJECT DIRECTOR, NATIONAL HIGHWAYS AUTHORITY OF INDIA (HEAD OFFICE), DWARAKA SECTOR 10, SOUTH WEST DELHI P.O., NEW DELHI, PIN - 110075
- 4 CHAIRMAN, NHAI, G-5 & 6, SECTOR-10, DWARAKA, SOUTH WEST DELHI P.O., NEW DELHI, PIN - 110075
- 5 STATE OF KERALA REPRESENTED BY ITS SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM P.O., PIN - 695001
- 6 PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT IMPLEMENTATION UNIT 34/743-B, VAISHNAVAM, CIVIL STATION P.O., KOZHIKODE., PIN - 673020
- 7 SPECIAL DEPUTY COLLECTOR AND COMPETENT AUTHORITY LAND ACQUISITION, NHAI, CALA, KOZHIKDE P.O., CIVIL STATION, KOZHIKODE., PIN - 673020
- 8 DISTRICT COLLECTOR KOZHIKODE, CIVIL STATION, KOZHIKODE, PIN - 673020

BY ADV.N.J.ASHWIN - CENTRAL GOVERNMENT COUNSEL
ADV.AJITH VISWANATHAN - GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W,P(C) No.32088 of 2025



.3.

2026:KER:10961

“C.R.”

J U D G M E N T

Dated this the 6th day of February, 2026

Petitioner filed this Writ Petition seeking disbursement of the compensation pursuant to acquisition of the petitioner's property by the 6th respondent/National Highways Authority of India (N.H.A.I). This case has a chequered history, which is narrated in brief herebelow:

The landed property having an extent of 0.0316 hectares of land belonging to the petitioner was acquired for widening of National Highway-66, as per the National Highways Act, 1956. Ext.P1 Award, as per Section 3G of the National Highways Act, was passed based on Ext.P2 Basic Valuation Report (B.V.R). Challenging Ext.P2 B.V.R, the 6th respondent filed an arbitration case before the District Collector/Arbitrator in terms of Section 3G(5) of the National Highways Act. The District Collector found that



Ext.P2 B.V.R. is erroneous and consequently reduced its value. Challenging the same, petitioner pursued the remedy under Section 34 of the Arbitration and Conciliation Act, 1996, before the District Court, Kozhikode. By Ext.P5 Order, the Award of the Arbitrator was set aside, finding violation under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act. The 6th respondent/N.H.A.I. challenged Ext.P5 Order of the District Court before this Court, which however, was repelled, vide Ext.P7 judgment.

2. Learned counsel for the petitioner would submit that the matter has attained finality by Ext.P7 judgment of this Court, wherefore, there cannot be any legal impediment for disbursement of the Award amount. Inasmuch as the Award passed by the Arbitrator has been set aside, the original Award passed by the Competent Authority of Land Acquisition (CALA) revives and disbursement has to be made in accord therewith, is the submission made by the learned counsel for the petitioner.



3. Learned Standing Counsel for the 6th respondent/ (N.H.A.I) would submit that Ext.P5 Order setting aside the Award of the Arbitrator was only under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, wherefore, the arbitration proceedings before the Arbitrator revives, automatically. Learned counsel would elaborate that Section 34(2)(a)(iii) is a power enabling the Court to set aside an arbitral Award, when the party making the application was not given proper notice of the appointment of the Arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case. In the instant case, the arbitral Award was set aside on the premise that the petitioner was not afforded with adequate opportunity to present his case. Inasmuch as the arbitral Award has been set aside on this technical ground, a remand is implicit, so as to revive the arbitral proceedings before the Arbitrator/Collector, is the submission made. Any interpretation otherwise would



seriously impinge on the rights of the 6th respondent/ N.H.A.I. to have the matter adjudicated on merits, especially when a remedy under Section 3G(5) of the National Highways Act enables the 6th respondent to take recourse to arbitration. Learned counsel would rely upon a recent judgment of the Hon'ble Supreme Court in ***Gayatri Balasamy v. M/s.ISG Novasoft Technologies Limited*** [2025 KHC Online 6421 :: 2025 INSC 605]. Learned counsel would invite the attention of this Court to paragraph nos.55 and 56 of the judgment to point out that a remit/remand is feasible in the instant facts.

4. In answer to the same, learned counsel for the petitioner would submit that, barring the provision under Section 34(4) of the Arbitration and Conciliation Act, there is no power, whatsoever, to remand a case to the Arbitrator, as per the scheme of Section 34 of the Arbitration and Conciliation Act. All what is provided in Section 34(2A) is that the Court can set aside the arbitral

W,P(C) No.32088 of 2025



.7.

2026:KER:10961

Award, if the same is vitiated by a patent illegality appearing on the face of the Award. A limited remand is contemplated in Section 34(4), which is a *pendente lite* proceeding, whereby a party to the proceeding can seek to adjourn the proceedings for a period of time determined by the Court, to afford an opportunity to resume the arbitral proceedings, so as to eliminate the ground for setting aside the arbitral Award. Learned counsel would elaborate that, it was open either for the petitioner, or for the National Highways Authority, to seek the proceedings under Section 34 to be adjourned and enable the parties an opportunity, so as to eliminate the ground for setting aside the arbitral Award. Having not taken recourse to that particular remedy under Section 34(4) and having proceeded Section 34 proceedings, to a logical conclusion vide Ext.P5, it is no more open for any of the parties to seek a remand, more so, when such a remand is not granted in Ext.P5 judgment.



5. Learned Government Pleader would submit that an appropriate call in this regard be taken by this Court based on the facts and circumstances.

6. Having heard the learned counsel appearing for the respective parties, this Court finds considerable force in the submissions made by the learned counsel for the petitioner. Section 34(2)(a)(iii) of the Arbitration and Conciliation Act is extracted herebelow:

“34.Application for setting aside arbitral award.-

(1) xxx

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that] -

(i) xxx

(ii) xxx

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; ”



Similarly, Section 34(2A) is also extracted herebelow:

“34.Application for setting aside arbitral award.–

(1) xxx

(2) xxx

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.”

Again, Section 34(4) is extracted herebelow:

“34.Application for setting aside arbitral award.–

(1) xxx

(2) xxx

(3) xxx

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral



tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

7. A perusal of Section 34(2A) would indicate that the court can only set aside the Award. There is no specific power granted to remit or remand the matter to the Arbitrator. This position has been clarified by a recent judgment of the Hon'ble Supreme Court in ***Saisudhir Energy Ltd. v. NTPC Vidyut Vyapar Nigam Ltd.*** [MANU/SC/0100/2026], whereby it has been held that the court can only set aside the Award and cannot modify the same, except in respect of arithmetical and clerical errors. It is true that Section 34(4) affords scope for a limited remand, so as to afford an opportunity to resume the arbitral proceedings, eliminating the ground for setting aside the arbitral Award. The obvious purpose is to afford the parties an opportunity, so as to avoid the ultimate setting aside of an arbitral Award on technical grounds. If the infirmity,



which is canvassed as a ground in a petition under Section 34, is curable in nature, let that be cured, appears to be the intention of Section 34(4), so that the Award can be sustained ultimately. In the instant case, recourse to Section 34(4) has not been made by any of the parties. This Court also takes stock of the fact that in Ext.P5, the learned District Judge has merely set aside the Award, without mentioning or referring anything about the remand or remit, presumably for the reason that there exists no such power. The findings of the learned District Judge is extracted herebelow:

“Considering the above-mentioned factual scenario of the case, I am of the view that the petitioner was unable to present his case before the Arbitrator for reasons beyond his control and the impugned award passed by the Arbitrator (Ext.A1) is liable to be set aside by this court by invoking the power under section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1956. Considered accordingly, I am of the view that the impugned arbitral award passed by the Arbitrator is not legally sustainable and liable to be set



aside and I do so. The point Nos. 1 and 2 are decided accordingly in favour of the petitioner.”

8. Ext.P5 Order has been confirmed by this Court, vide Ext.P7 judgment, wherein also, there is no whisper, whatsoever, about a remand, as sought to be canvassed by the learned counsel for the 6th respondent. Now, coming to the judgment relied upon by the learned counsel for the 6th respondent in **Gayatri Balasami** (supra), this Court notice that the same is rendered in the context of Section 34(4) of the Arbitration and Conciliation Act. The remedial power of remand is considered in the context of Section 34(4). In paragraph no.56 of that judgment, the Hon'ble Supreme Court cautions that the power of remand permits the Court only to send the Award to the Tribunal for reconsideration of specific aspects, and not an open-ended process. Such power is a limited power confined to limited circumstances, and the Arbitral Tribunal, upon remand, will have to proceed in the manner warranted by the situation, so as to cure the



defect. This judgment is hardly supporting the 6th respondent's case that, in a case where an arbitral Award is set aside on grounds recognized under Section 34(2)(a)(iii), it implies a remand. The argument is therefore repelled.

9. Faced with the situation, learned counsel for the 6th respondent seeks time to take appropriate action as permitted by law to seek review of Ext.P7 judgment or Ext.P5 Order, as the case may. This was opposed by the learned counsel for the petitioner by pointing out that the property was acquired way back in 2020 and the amount due to the petitioner has not been disbursed in full.

10. When this Court finds that the contention of implicit remand raised by the 6th respondent is not liable to be recognized in law, the relief sought for by the petitioner cannot be refused. However, if the 6th respondent wants to pursue the remedy, if any available in law otherwise, the



same can be permitted to be done within a time frame to be fixed by this Court. Accordingly, this Court affords 45 days' time to the 6th respondent from today (06.02.2026) to seek review of Ext.P7 judgment or Ext.P5 Order, as the case may be. If no favourable Orders are received by the 6th respondent so as to enable the resurrection of the proceedings before the Arbitral Tribunal, there will be a direction to the 7th respondent to disburse the amount due to the petitioner, as per the original Award of CALA. In case money is not deposited with the 7th respondent by the 6th respondent, the same also shall be done immediately upon the expiry of the 45 days period stipulated above. The 7th respondent shall comply with the above direction within a period of one month from the date of expiry of 45 days period as stipulated above. The learned Standing Counsel for the 6th respondent will apprise the gist of this judgment to the 6th respondent, today itself (06.02.2026), since the time starts running from this date.

W,P(C) No.32088 of 2025



.15.

2026:KER:10961

The Writ Petition (Civil) will stand disposed of, as above.

Sd/-

C. JAYACHANDRAN
JUDGE

TR



APPENDIX OF WP (C) NO. 32088 OF 2025

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE AWARD LAC : 5 (NDK) DATED 23.01.2020
- Exhibit P2 TRUE COPY OF THE PROCEEDINGS OF THE SPECIAL DEPUTY COLLECTOR NAMELY THE 7TH RESPONDENT HEREIN IN RELATION TO THE PROPERTY OF THE PETITIONER AS WELL DATED 10.12.2017 ALONG WITH TYPED COPY
- Exhibit P3 TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR IN ARBITRATION APPLICATION NO.02/2020 IN LAC NO.5 (NDK) OF CALA, KOZHIKODE DATED 10.08.2020
- Exhibit P4 TRUE COPY OF THE AWARD NO.5 (NDK) DATED 10.08.2020 ISSUED BY THE 7TH RESPONDENT
- Exhibit P5 TRUE COPY OF THE ORDER RENDERED BY THE DISTRICT COURT IN O.P.(ARB) NO.296 OF 2020 DATED 03.04.2024
- Exhibit P6 TRUE COPY OF THE ARBITRATION APPEAL NO.1 OF 2025 FILED ON 09.01.2025, BEFORE THE HON'BLE HIGH COURT OF KERALA
- Exhibit P7 TRUE COPY OF THE JUDGEMENT IS RENDERED BY THIS HONOURABLE COURT IN THE ARBITRATION APPEAL NO.1 OF 2025 DATED 23.07.2025
- Exhibit P8 TRUE COPY OF THE REQUEST LETTER DATED 05.08.2025 ISSUED BY THE PETITIONER SUBMITTED BEFORE THE 6TH RESPONDENT ALONG WITH POSTAL RECEIPTS IN THIS REGARD